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Conference of Circuit Judges
COURTS OF APPEAL BUILDING
ANNAPOLIS, MD 21401

**MINUTES OF THE MEETING OF THE
CONFERENCE OF CIRCUIT JUDGES**

A meeting of the Conference of Circuit Judges was held Monday, May 15, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. Kathleen Gallogly Cox, Chair

Hon. Brian D. Shockley
Hon. Brett W. Wilson
Hon. Keith A. Baynes
Hon. Thomas G. Ross
Hon. Mickey J. Norman
Hon. W. Timothy Finan
Hon. Viki M. Pauler
Hon. J. Barry Hughes
Hon. Laura S. Kiessling, Vice Chair

Hon. Theresa M. Adams
Hon. John W. Debelius, III
Hon. Sheila R. Tillerson Adams
Hon. Marjorie L. Clagett
Hon. Audrey J.S. Carrion
Hon. W. Michel Pierson
Hon. Susan Braniecki
Pamela Harris
Timothy Sheridan

Also, Present Were:

Hon. Michael J. Stamm
Hon. Gary G. Everngam
Hon. Norman R. Stone, III
Faye Matthews
Jennifer Boswell
Tony Hatzigeorgalis
Melinda Jensen
Debra Kaminski

Sarah Kaplan
Stephane Latour
Kelley O'Connor
Eliana Pangelinan
Suzanne Pelz
Lee Robinson
Andrew Tress
Connie Winkel

1. Approval of Minutes

Judge Debelius moved for approval of the minutes of the March 20, 2017, meeting. Following a second by Judge Hughes, the motion passed.

2. MDEC Training – Senior Judges

Chief Judge Morrissey talked to the Conference about the importance of ensuring that senior judges are trained on MDEC. He stated that judges who are retiring in the near future and are planning to be considered for recall service should contact him to arrange for training. Judge Hughes asked if being trained on MDEC would be a condition of being recalled to sit to which Chief Judge Morrissey responded that it is not a requirement, but that senior judges will not be able to do chambers work without having knowledge of MDEC. He added that one of the best ways to acquire the training is to observe other judges who are using the system.

Chief Judge Morrissey stated that the next implementation will be in the South (Calvert, Charles, and St. Mary's counties) on June 12, 2017, followed by the West (Allegany, Frederick, Garrett, and Washington counties) in October 2017, and the North Central (Carroll, Harford, and Howard counties) in April 2018.

3. Resolution Regarding Imposition of Court Costs, Fines and Fees on Juveniles

Judge Stamm presented the revised *Resolution Regarding Imposition of Court Costs, Fines, and Fees on Juveniles in Justice Proceedings* from the Juvenile Law Committee. He stated that the Committee is not requesting that *no* costs or fines are imposed, but rather that judges and magistrates consider all factors before making a decision to impose costs and/or fines. The factors include, but are not limited to, the offense committed, the child and family's financial circumstances, the child's developmental level, and the child's progress in school or involvement in other activities. Further, the Committee proposed that before a child is sanctioned for failure to pay costs or fines that the court first determine the child's ability to pay. Finally, the Committee proposed that a child's entry into a diversion program or other alternative program not be conditioned on the payment of a fee that the child or his/her family cannot pay.

Judge Stamm commented that the judges and magistrates are not uniform in their application of costs and fines. He added that the Office of the Public Defender will represent all children regardless of the child's or parents' financial ability. In response to Judge Carrion's question regarding sanctions for failure to pay, Judge Stamm noted that the judge or magistrate first should determine if there is good cause and then address the failure to pay. He also stated that the intent is not to tell judges what to do, but to provide some guidance on the matter while not taking away their discretion.

Judge Theresa Adams moved for adoption of the resolution. Following a second by Judge Claggett, the motion passed.

4. Final Report of the Juvenile Expungement Workgroup

On behalf of the Juvenile Law Committee, Judge Stamm presented the final report of the Juvenile Expungement Workgroup, including the Juvenile Record Expungement Manual. He

noted that a number of possible issues regarding the rules cited in the report were raised during the presentation of the report to the Judicial Council, resulting in the need to review and modify the report and once again present it to the Conference for approval. Judge Wilner reviewed the manual and provided guidance to the workgroup in a number of areas, including forms, processes and procedures. Judge Stamm commented that any forms issued by the court will be able to be generated in MDEC.

Judge Debelius moved for approval of the report. Following a second by Judge Theresa Adams, the motion passed.

5. Judicial Branch Policies of General Application

Lee Robinson, Judiciary Human Resources Department (JHRD), informed the Conference of four recently adopted policies that are applicable to all employees within the Judicial Branch, regardless of their employment funding source, pursuant to Rule 16-806 (a)(2). The policies address Title VII protections, as well as nepotism. As a result of the adoption of the policies, which become effective July 1, 2017, county administrative judges will be required to appoint EEO Coordinators for employees under the judge's authority and supervision. The policies outline other responsibilities for the administrative judges. In addition to the above, Mr. Robinson also informed the Conference about the Policy on Confidentiality, which is applicable to all employees within the Judicial Branch and emphasizes the requirement for employees to hold confidential all information obtained as a result of employment within the Judicial Branch.

6. Judicial Financial Disclosure Statements

Stephane Latour, Internal Affairs Division of the Administrative Office of the Courts and Debra Kaminski, JHRD, discussed the requirements regarding judicial financial disclosure statements. Mr. Latour provided an overview of the statutes (Md. General Provisions Code Ann. § 5-601 and § 5-610) and rule (Md. Rule 18-603) that govern judicial financial disclosure statements, noting that once filed the statements become public records. Ms. Kaminski discussed the review process, stating that Financial Disclosure Subcommittee, comprised of Judge Clayton Greene, Judge Robert McDonald, and Judge Joseph Getty, reviews the statement, instructions, and any proposed changes. All final changes then are presented to the full Court for final approval. Judges have the option of filing online or using the paper version, but JHRD is required to forward electronically all statements to the State Ethics Commission. Ms. Kaminski highlighted some of the advantages of filing online, including the information automatically populating the form from year-to-year and the ability to access the form at any time.

Ms. Kaminski then discussed how public requests to view judges' financial disclosure statements are handled. Requesters are required to view the statements in person at the JHRD offices. In addition, the requestor has to provide a photo identification and a log is maintained of every requestor. Filers are notified if their statements are viewed and/or copied. Ms. Kaminski stated that prior to the statement being viewed, the filer's signature, real property addresses (except county and state or country), account numbers, and Social Security numbers are redacted. The information is redacted on both current and old forms. Ms. Kaminski stated that the public also is able to view the statements through the State Ethics Commission, but the Commission advises her whenever it happens. She will inquire as to whether or not the Commission redacts the information.

The JHRD retains the statement permanently; however, Ms. Kaminski is not aware of a statutory requirement to do so.

Judge Kiessling commented that an area of concern is the requirement to provide information about spouses and children on the statement, adding that a threat against a magistrate's husband and sons heightened the concern because of availability of their names and places of employment. She asked whether any consideration had been given to redacting that information. Mr. Latour agreed to discuss the matter with Michele McDonald and Ms. Kaminski will discuss the matter with the workgroup.

Judge Cox asked if quick tips for completing the statement, as well as information regarding the public's access could be included in the correspondence sent reminding judges and magistrates to complete the form. In addition to the aforementioned, Ms. Kaminski will include the quick reference guide.

7. Judicial Law Clerks

Ms. Kaminski discussed the hiring process for judicial law clerks. She informed the Conference that going forward, law clerks must start on the first day of the pay period to avoid a delay in their pay check. She further stated that the background check must be completed before the law clerk begins and that to ensure the background check is completed in a timely manner, JHRD should receive the completed form at least 10 business days in advance of the law clerk's first work day. The name of new law clerks should be submitted to JHRD as soon as a selection is made, whether or not the start date is known. This will ensure that all of the necessary paperwork is completed and result in a smooth transition. Each June, onboarding sessions for new law clerks are held at the University of Baltimore's School of Law or the University of Maryland's School of Law.

8. SharePoint 2013

Tony Hatzigeorgalis, Judicial Information Systems, provided an overview of SharePoint 2013, stating that it is a secure environment that allows users to exchange, view, and edit documents based on access levels. He added that SharePoint is an alternative to using email to exchange edited documents because all of the edits are contained in one area and only one person can "check out" and edit the document at a time and all changes are tracked. Each time a document is checked out, a new version of the document is saved. Mr. Hatzigeorgalis explained the approval process, as well as the SharePoint document library structure. The Conference has a SharePoint site where all meeting materials and minutes are stored. For information on how to access the Conference site, contact Eliana Pangelinan at eliana.pangelinan@mdcourts.gov.

9. e-Warrants

Judge Gary Everngam and Judge Norman Stone briefed the Conference on the status of the e-warrant initiative. They reiterated that e-warrants permit law enforcement officers to request and judges to issue search warrants through secure email, using ShareFile to protect the contents. The program is web-based and uses Adobe to facilitate e-signatures. Judge Stone noted that the program is not iPad compatible, but otherwise is available at any time and from

anywhere because it is web-based. Effective April 1, 2017, returns can be sent using the same link.

Judge Everngam stated that the administrative order issued by Chief Judge Barbera in June 2015 requires the County and District Administrative Judges in each jurisdiction to collaborate to establish protocols for the implementation of electronic search warrants, using the procedures developed by the Court Technology Committee as a guide. The protocols must require a written certification from law enforcement that the domain they use is secured by a Secure Sockets Layer certificate.

Judge Stone explained the process that was developed for Baltimore County. He noted that he will share the process and templates, as well as the written agreement the court has with the county, with anyone who is interested. Judge Cox commented that the law clerks were trained on how to download the requests and forward the links to the judges for action, adding that the largest volume is during the day.

10. Legislative Update

Judge Finan provided a recap of the 2017 Legislative Session. He noted that there was a lot of attention focused on pretrial release and bail review and that the Legislative Committee will continue to track any movement in that area in preparation for the next session. The two bills introduced as part of the Judiciary's package both passed, one altering the definition of "sexual abuse" in provisions of the law that relate to "child in need of assistance" to include "sex trafficking," and the other authorizing commissioners, except those in Baltimore City, to serve in counties contiguous to the counties in which they reside.

Judge Finan highlighted SB 714, which requires District Court commissioners to determine indigency, rather than the Office of the Public Defender (OPD), for the purpose of the individual's eligibility to be represented by the OPD. He also noted HB 1382/SB 1121, which prohibits the name of a candidate for a circuit court judgeship from appearing on the ballot at the general election if the candidate was defeated in the primary election.

Judge Cox thanked Judge Finan, the committee, and the staff for their work during the session.

11. Justice Reinvestment Act

Judge Cox provided an update on the implementation of the Justice Reinvestment Act. She stated that the main provisions of the Act go into effect October 1 2017, adding that it represents a sea change for the way violations of probation (VOP) are handled. The Justice Reinvestment Oversight Board, which is chaired by Judge Daniel Long, is tasked with overseeing the implementation of the provisions of the Act, assessing related data, and making recommendations to the pertinent agencies. In addition, the Board is charged with collaborating with a number of agencies, as well as the Administrative Office of the Courts to create performance measures to track and assess the outcomes of the Act's provisions. Judge Cox and Chief Judge Morrissey serve on the Board.

Judge Cox advised that there will be an implementation update on the Act at the upcoming Judicial Conference. In addition, Chief Judge Morrissey suggested that each

administrative judge or designee (or both) attend the all-day, in-depth training session, which is scheduled for August 18. Information from that training can be shared within each jurisdiction to assist with the transition in October.

Judge Cox provided data sorted by jurisdiction concerning individuals currently serving mandatory drug sentences who are eligible for sentence review hearings under the Act. She noted that all affected sentence modifications require in-person hearings, rather than paper reviews. Judge Cox stated that her court met with the OPD and the head of the State's Attorney's Association to establish a protocol to promote efficient review of these cases. The draft protocol was provided, and can be tailored for use in other jurisdictions with a significant volume of mandatory sentence reviews. Under the protocol, the OPD provides the SAO an institutional history for each individual, to include their projected and mandatory release dates. The SAO then conducts a preliminary review of case files, and identifies cases where it will not contest modification of sentence. Those cases can be fast tracked for hearing. For cases that are contested, or where additional information is needed for the SAO review, the OPD intends to have social workers prepare social histories and assessments. The preliminary SAO review will help focus resources on contested cases and will enable the court to anticipate docket needs.

Judge Cox commented that one of the biggest impacts when the Act is implemented will be the handling of VOPs. The Act distinguishes between technical and non-technical violations, and provides presumptive caps on sentences imposed for technical violations. The legislation requires the Judiciary to compile data on when the VOP sentence is outside of the established cap and to report in ways data is not currently collected. A group within the Judiciary has worked with the Division of Parole and Probation (P&P) to establish a reporting protocol and forms to ensure adequate tracking. P&P will indicate whether the violation is technical or non-technical. For technical violations, P&P will note the number of the violation, as the established cap varies for the first, second, or third violation. In addition, P&P will notify the court every time there is a minor or major infraction imposed; the judge can determine whether or not to schedule a hearing for those infractions.

JIS is developing a stand-alone, web-based system for non-MDEC counties to collect the necessary information. In addition, changes are being made to MDEC to facilitate capturing the information directly in the case management system.

12. Local Detention Population Reviews

Judge Cox inquired as to whether courts are receiving weekly reports from the local detention centers listing the detainees and, if so, how are they used. Several judges commented that they receive and review the reports. They are used as a tool to determine if individuals are being held with no action or if they were inadvertently missed for a bail review or if warrants have been issued on detained individuals. Judge Cox stated that the local jails are required to submit the weekly reports.

13. Local Bail or Pretrial Release Initiatives

Judge Cox stated that Chief Judge Barbera presided over Mid-Atlantic Regional Pretrial Reform Summit where states identified pretrial and bail reform as the focus this year. In many states, cash bail has been eliminated entirely, while other states are exploring the use of risk

assessment instruments or more intensive pretrial review. Judge Cox commented that she anticipates more legislative focus in this area during the 2018 Legislative Session. She inquired about any local initiatives underway or in the planning stages. Judge Clagett stated that Calvert County adopted St. Mary's County's protocol. A risk assessment is done to determine eligibility for pretrial release. The judge receives the assessment before the bail review. The jail population has decreased significantly. Judge Clagett noted that personnel in the jail was redistributed, so that there was not a need to hire additional staff. Judge Debelius commented that there has been a pretrial services unit in place in Montgomery County for some time. The judge has the screening assessment prior to the bail review. Judge Kiessling stated that Anne Arundel County has had a very effective pretrial services program in place for years. The judges get an oral report, as well as the assessment with recommendations. There are five levels of pretrial services in place, ranging from no contact to pretrial house arrest.

Judge Cox commented that six jurisdictions in Maryland use some type of tool to determine pretrial release. She suggested that any court that pilots a pretrial reform initiative include a process to track their data, as those results will be helpful in response to upcoming legislative proposals in this area. Chief Judge Morrissey stated that if the courts spearhead the effort and take the lead, the counties will be able to save money from the detention centers. He encouraged the Circuit and District Courts to work together in determining the way forward. Judge Cox added that it will be very costly for the State to develop a statewide pretrial services department and, as such, it is unlikely that it will happen. She stated further that the local jurisdictions need to determine what works best for them. Judge Cox asked the Conference to make her aware of any plans to start a pretrial services program.

14. Firearms – Notice of Disqualification Language

Judge Theresa Adams and Judge Clagett distributed the Notice of Post-Trial Rights form they drafted for the Conference's consideration. There were a few minor modifications suggested for consistency, as well as inclusion of the Office of the Attorney General's website. Judge Debelius requested that the form be translated in Spanish. It was agreed that the form not be made mandatory, but rather made available for use if the court so desires. The Conference approved the form and agreed to make it available to everyone in paper. Judge Adams will make the necessary changes and forward it to the Forms Subcommittee.

15. Leave for Magistrates

Judge Theresa Adams addressed the Conference regarding the amount of leave earned by magistrates who are State employees. When a magistrate begins employment as a new State employee, he or she earns two weeks of leave and that rate does not increase until after five years of service. Judge Adams, speaking on behalf of the Frederick County bench, requested that the Conference respectfully ask Chief Judge Barbera to reconsider her decision not to increase the earnings rate. She emphasized the stressful nature of the job, as well as the fact that the magistrates are experienced lawyers who gave up their law practices where they were earning leave at a much higher rate. Other Conference members expressed their agreement with Judge Adams, but noted that the decision impacts more than the magistrates. Additionally, a recommendation to increase leave for magistrates was approved by the Conference and presented to Judge Barbera within the last year.

After some discussion, it was agreed that the matter be tabled for now and possibly revisited next spring.

16. For the Good of the Order

Judge Debelius noted that ICE activity has increased in his courthouse. As a compromise, the department has agreed to contact the Sheriff's office when the agents plan to pick up someone and then wait outside of the courthouse before apprehending the individual. Judge Debelius stated that his concern is that individuals will be discouraged from filing for protective orders or serving as witnesses.

17. Resolution

Judge Cox acknowledged the service provided by Judge Debelius to the Conference, as well as to the Maryland Judiciary as he prepares to retire as an active judge. She thanked him for his hard work and wished him well in retirement.

Action Item

- Judge Theresa Adams will make the changes to the Notice of Post-Trial Rights form and forward it to the Forms Subcommittee. Once approved, the form will be translated to Spanish.

There being no further business, the meeting was adjourned at 12:35 p.m. The next meeting will be held on Monday, September 18, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,



Faye D. Matthews
Conference Secretary